**Editor's note: Reconsideration denied by Order dated April 10, 1990**

DELFINO J. AND CLARA M. BORREGO

IBLA 88-448 Decided February 22, 1990

Appeal from a decision of the Albuquerque District Office, Bureau of Land Management, rejecting color-of-title application NM 46468.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

   An applicant for a class I claim under the Color of Title Act has the burden of establishing to the Secretary of the Interior's satisfaction that each of the statutory requirements for purchase under the Act have been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

2. Color or Claim of Title: Generally--Color or Claim of Title: Applications--Color or Claim of Title: Description of Land

   Occupancy and improvement of public lands without color of title create no vested rights as against the United States, because no adverse possession of Government property can affect the title of the United States, except as provided by the Color of Title Act. In order to satisfy the statutory requirement of possession of the land under claim or color of title, an applicant's claim of apparent ownership must be based on a document which, on its face, purports to convey title to the claimed land.

APPEARANCES: Delfino J. and Clara M. Borrego, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Delfino J. and Clara M. Borrego (applicants or the Borregos) appeal from a March 31, 1988, decision of the Albuquerque District Office, Bureau of Land Management (BLM), rejecting color-of-title application NM 46468.

On July 9, 1981, the Borregos filed an application with BLM pursuant to the Color of Title Act (sometimes referred to as the Act), 43 U.S.C § 1068 (1982), seeking title to approximately 30 acres of land situated in secs. 25 and 26, T. 22 N., R. 8 E., New Mexico Principal Meridian, Rio Arriba County,

New Mexico. 1/ The Borregos did not respond to the question in their application requesting the basis of their claim. They did, however, indicate that they had held the land since April 14, 1952, and had placed a trailer and fencing on the land in 1960. They also stated that they learned they did not have clear title to the land in 1981, when BLM advised them of
that fact. The Borregos also submitted a map prepared in 1974 by a private surveyor, 2/ and various deeds and tax receipts in support of their application.

Prior to the 1950's, the Rio Grande River flowed through the subject parcel. The U.S. Army Corps of Engineers channeled the river in 1958, and land which had previously formed the bottom of the river became part of the parcel now sought. Apparently BLM was not sure that the lands exposed by the channeling were public lands, and was unable to process the Borregos' application until the area had been surveyed to clarify the land status.

A survey was conducted and completed on February 10, 1988. Following completion of the survey, a land report, dated March 15, 1988, was prepared to analyze the suitability of the subject lands for disposal under the Color of Title Act. BLM noted that the lands, which had previously been river bottom, were created by a man-caused avulsive act, and were public lands.

The March 1988 BLM report also described the condition and use of the lands in question. BLM stated that an abandoned sheepherders trailer, old washing machines, and assorted fencing in bad repair existed on the parcel, but that none of these items enhanced the value of the parcel, and therefore there were no valuable improvements, as required by the Act. After reviewing the deeds submitted by applicants, BLM found that these deeds described areas north and south of the subject lands, but did not describe the parcel sought. Accordingly, BLM concluded that the Borregos had not satisfied the requirements of the Act by submitting documents which, on their face, conveyed title to the land.

The record contains a copy of a Motion to Compel Removal of Property and Request for Hearing in Ernesto Lopez, Fred Lopez & Juan Lopez v. Delfinio Borrego & Clara Borrego, Nos. 13046 and 13193 which was filed with the District Court, Rio Arriba County, New Mexico, and served on Borregos' counsel on August 11, 1982. In the motion the Lopez's sought a court order compelling the removal of a mobile home and various washing machines located on land subject to a "Partial Final Decree" entered on September 3, 1981,
in which "Plaintiffs were declared owners, as against Defendants of certain

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1/ This tract is within the Sebastian Martin Land Grant. The Department
of Agriculture acquired lands in the Sebastian Martin Land Grant from the private owner in 1935. After that date it sold various parcels to private owners, including the Borregos, who received approximately 7.8 acres on May 4, 1953. (A copy of this deed was submitted with their application.) Jurisdiction over the remaining lands was later transferred to the Department of the Interior. Exec. Order No. 10787,23 FR 8717 (Nov. 8, 1958).

2/ The map was not prepared to describe the land in the application, and the parcel sought by the Borregos is not specifically marked on the map.

land and real estate within the Sebastian Martin Grant, in the vicinity of San Francisco de la Estaca, County of Rio Arriba, State of New Mexico." Based upon this evidence the land report concluded that applicants had not held the parcel in peaceful adverse possession. The author of the report recommended that the Borrego color-of-title application be rejected.

BLM based its March 31, 1988, decision rejecting the Borregos' application on the land report. After citing the requirements that a color-of-title applicant must hold the land claimed in good faith and in peaceful, adverse possession for more than 20 years under a claim or color of title and must place valuable improvements on the land or reduce part of the land to cultivation, BLM found the following deficiencies:

> 1. * * * [T]he deeds submitted do not describe the parcel being applied for but describe areas north and south of the subject lands.
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> 2. The parcel could not have been held in peaceful adverse possession as shown in a District Court judgement [sic] compel-ling the applicant to remove certain property from the subject parcel dated August 11, 1982. [3/]
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> 3. * * * [T]he parcel has no improvements and has not been under cultivation.

In their statement of reasons for appeal (SOR), the Borregos do not challenge BLM's determination that the deeds they submitted do not describe the parcel requested. Rather, they argue that they possessed the land for over 20 years before BLM came into the picture. They state that an employee of the Soil Conservation Service (SCS), U.S. Department of Agriculture, knew that they possessed the land and advised them to fence it, place a trailer on it to establish ownership, and use it as their own. 4/ They state they followed this advice, and even went with the SCS employee to the county assessor to have the land assessed. They claim that the assessor placed the lands on the tax rolls in their name and that, pursuant to the SCS employee's instructions, the assessor also assessed the land for the preceding 10 years. The evidence indicates that the Borregos paid the property taxes in the subsequent years.

In an attempt to counter the implication that the quiet title judgment against them negated their claim of peaceful adverse possession, the

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3/ The motion to compel was served on Aug. 11, 1982. The record does not contain a copy of either the underlying Partial Final Decree dated Sept. 3, 1981, or an order granting the motion.

4/ Assuming this to be true, the statement in the application that they first learned that the land did not belong to them in 1981 when advised of that fact by BLM was erroneous. Rather they were apprised of that fact in 1960 when the SCS employee advised them to fence it, place a trailer on it to establish ownership, and use it as their own.

Borregos admit they knew that the land had never belonged to any private owner by title, and that the land was part of the Sebastian Martin Land Grant. 5/ Finally, the Borregos argue that there are valuable improvements on the land. They claim that they fenced the land, levelled it with a bulldozer, and spread grass seed on it. They also contend that the trailer which they placed on the land pursuant to the advice of the SCS employee to establish ownership constitutes a valuable improvement, and that there is a corral located on the north side of the land which they have used since 1953.

[1] The Color of Title Act, 43 U.S.C. § 1068 (1982), provides in relevant part:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre * * *.

The method for obtaining patent outlined in subsection (a) of 43 U.S.C. § 1068 (1982) is known as a class I claim. 43 CFR 2540.0-5(b).

An applicant under the Act has the burden of establishing to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met. John P. & Helen S. Montoya, 113 IBLA 8 (1990); Hal H. Memmott, 77 IBLA 399, 402 (1983); Corinne M. Vigil, 74 IBLA 111, 112 (1983); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1975); Homer W. Mannix, 63 I.D. 249 (1956). Each of the requirements for a class I claim must be met, and a failure to carry the burden of proof with respect to one of the elements is fatal to the application. See John P. & Helen S. Montoya, supra; Hal H. Memmott, supra; Lester & Betty Stephens, 58 IBLA 14 (1981).

[2] Prescriptive rights cannot be obtained against the Federal Government. Occupancy and improvement of public lands without color of title create no vested rights as against the United States, and no adverse possession of Government property can affect the title of the United States, except as provided by the Color of Title Act. See, e.g., United States v. Osterland, 505 F. Supp. 165, 169 (D. Colo. 1981). In order to satisfy the statutory requirement of possession of the land under claim or color of title, an applicant's claim of apparent ownership must be based on a document which, on its face, purports to convey title to the claimed land. See

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5/ They also contend that the state court judgment against them was the product of "false witnesses and a deed, not ever notarized or recorded, only signed with a couple of witnesses" (SOR at 2).

John P. & Helen S. Montoya, supra; Rebecca S. Knott-Gray, 112 IBLA 148, 151 (1989); Alvin E. & Mary R. Leukuma, 103 IBLA 302, 305 (1988); Jerome L. Kolstad, 93 IBLA 119, 121 (1986); Carmen M. Warren, 69 IBLA 347, 349 (1982); Anthony T. Ash, 52 IBLA 210 (1981); Marie Lombardo, 37 IBLA 247 (1978).

The Borregos do not controvert BLM's conclusion that the deeds they submitted with their application describe land north and south of the requested parcel and not the parcel sought, nor have they presented any other document on appeal which might establish a claim or color of title to the parcel. Thus there is no document of record which, on its face, purports to convey title to the claimed land and nothing to support a claim or color of title. It is apparent from their SOR that applicants have mistakenly based their claim on adverse possession of the land for over 20 years. However, as noted above, mere possession and improvement of the land do not satisfy the requirements of the Color of Title Act. That Act mandates that the claim be based upon a document purporting to convey title to the land applied for. See Estate of James J. Lee, Deceased, 26 IBLA 102, 103-04 (1976); Cloyd & Velma Mitchell, 22 IBLA 299, 302-03 (1975). Such occupancy and use of Federal land without color or right give no prescriptive rights against the United States. See, e.g., United States v. Osterland, supra; Loyla C. Waskul, 102 IBLA 241, 243 (1988). Because the Borregos have failed to provide a document which, on its face, purports to convey title to the requested parcel, their application fails.

In that applicants do not hold the land under claim or color of title, we deem it unnecessary to discuss whether they have satisfied other statutory requirements.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge